

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DUBUQUE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES LEPPERT,

Defendant.

No. CR 03-1022

**ORDER REGARDING
MAGISTRATE'S REPORT AND
RECOMMENDATION**

I. INTRODUCTION

The matter before the court is Defendant's Objections (docket no. 36) to Chief Magistrate Judge Jarvey's Report and Recommendation (docket no. 33) denying Defendant Charles Leppert's ("Leppert") Motion to Suppress (docket no. 19).

Leppert objects to the Report and Recommendation on the grounds that: (1) there was insufficient evidence presented to the magistrate to make a finding of probable cause; and (2) the *Leon* good faith exception should not apply.

II. STANDARD OF REVIEW

The district court judge shall reconsider any pretrial order where the movant succeeds in showing that the magistrate judge's order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). The district court judge shall make a *de novo* determination of those portions of the report or recommendation to which the movant objects. 28 U.S.C. § 636(b)(1)(C); *see also U.S. v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003). The district court judge may accept, reject, or modify, in whole or in part, the magistrate judge's findings or recommendations. *U.S. v. Trice*, 864 F.2d 1421, 1424 (8th Cir. 1988).

Leppert has made specific, timely objections in this case; therefore, *de novo* review of "those portions of the report or specified proposed findings or recommendations to which objection is made" is required. *See* 28 U.S.C. § 636(b)(1).

III. ANALYSIS

The court adopts Magistrate Judge Jarvey's findings of fact, which are fully supported by the record. The court notes Leppert does not have any dispute with the factual recitation made in the Report and Recommendation.

A. Probable Cause

Leppert objects to Magistrate Judge Jarvey's conclusion the search warrant issued to search his residence on November 15, 2002 was supported by probable cause. In particular, Leppert avers the warrant was based on information which provided the issuing judge little indication the place to be searched actually harbored evidence of a crime.

An issuing judge's finding of probable cause is entitled to great deference. *Illinois v. Gates*, 462 U.S. 213, 236 (1983); *U.S. v. Curry*, 911 F.2d 72, 75 (8th Cir. 1990). The duty of the reviewing court is simply to ensure the issuing judge had a substantial basis for concluding probable cause existed. *Gates*, 462 U.S. at 238-39. In order to determine the sufficiency of an affidavit to support probable cause, the court must consider the totality of the circumstances. *See id.* at 230-37; *U.S. v. Wright*, 145 F.3d 972, 975 (8th Cir. 1998). This is true even if the warrant application rests solely on information provided by an informant. *U.S. v. Koons*, 300 F.3d 985, 990 (8th Cir. 2002) ("An informant's tip is sufficient to support probable cause if the totality of the circumstances shows that it is reliable.") (citing *Gates*, 462 U.S. at 238).

Leppert points out the confidential informant told officers on November 6, 2002, Leppert and his co-defendant, Melissa Altman, were staying at Jodi Riesdorf's house, 2618 Central Avenue, Dubuque, Iowa. He argues the use of the term "staying" rather than "living" or "residing" connotes a temporary condition. Sergeant Egan applied for the search warrant on November 16, 2002 and it was issued the same day. Leppert surmises the fact the confidential informant knew Leppert and Altman were staying at Ms. Riesdorf's house weeks before the search took place does not indicate Leppert and Altman were still staying at Ms. Riesdorf's house on November 16, 2002, when the search warrant was applied for and issued. He also argues Sergeant Egan included nothing in the warrant

application to indicate he or other officers verified or attempted to verify Leppert and Altman lived at 2618 Central Avenue, Dubuque, Iowa on November 16, 2002.

However, Leppert overlooks the fact Sergeant Egan met with Robert Gretillat at 11:10 p.m. on November 15, 2002 and Gretillat stated he had gotten methamphetamine from Leppert that day at the same residence at which the confidential informant indicated Leppert had been staying. Moreover, Gretillat stated he resided at 2618 Central Avenue, Dubuque, Iowa, with Melissa Altman and a man whom he knew as “Chuck.” When Sergeant Egan showed Gretillat a photograph of Leppert, Gretillat identified Leppert as “Chuck,” the man with whom he’d been living for a month.

Leppert argues Gretillat’s statements are inherently suspect because he claimed to be an accomplice in the crime. Gretillat’s information may be sufficiently reliable to support a probable cause determination if the information was corroborated by independent evidence. *See U.S. v. Williams*, 10 F.3d 590, 593 (8th Cir. 1993) (“If [some] information from an informant is shown to be reliable because of independent corroboration, then it is a permissible inference that the informant is reliable and that therefore other information that the informant provides, though uncorroborated, is also reliable.”). The confidential informant corroborated Gretillat’s statements: (1) Leppert and Altman were residing at Ms. Riesdorf’s house; and (2) an individual exchanged a shotgun with Leppert and Altman for one-half gram of methamphetamine. Although the confidential informant stated a Mr. Fuller sold the gun to Leppert and Altman while Gretillat said Ms. Riesdorf sold it to them, the inconsistency is minor in light of the totality of the circumstances. Sergeant Egan informed the judge the confidential informant was credible because the person had been an active informant for the Dubuque Drug Task Force since 1992, the person had made several undercover narcotics purchases which resulted in the successful prosecution of numerous cases in the Dubuque, Iowa, area. Therefore, while Gretillat’s statements may not alone be reliable, the confidential informant partly corroborated his information, thus demonstrating Gretillat’s credibility. *See id.*

Based on these facts as presented to the judge, the court finds the issuing judge had a substantial basis for concluding Leppert and Altman actually resided at 2618 Central Avenue, Dubuque, Iowa, and the residence harbored evidence of a crime, thus establishing probable cause to search the residence. However, even if the judge did not have probable cause for believing Leppert and Altman resided at that address or criminal evidence would be found at the residence, the court may rely on the *Leon* good faith exception in upholding the search.

B. Good Faith Exception

Leppert also objects to Magistrate Judge Jarvey's conclusion the search of Leppert's residence was reasonable under the *Leon* good faith exception to the warrant requirement because Leppert contends the affidavit upon which the search warrant was based is so lacking in indicia of probable cause as to render official belief in its existence objectively unreasonable. See *U.S. v. Leon*, 468 U.S. 897, 923 (1984). The Eighth Circuit Court of Appeals addressed this exception to the good faith exception to the warrant requirement in *United States v. Carpenter*, 341 F.3d 666 (8th Cir. 2003):

Where a warrant is “based on an affidavit ‘so lacking in indicia of probable cause as to render official belief in its existence *entirely unreasonable*,’” an officer cannot “manifest objective good faith in relying on [the] warrant.” *Leon*, 468 U.S. at 923 (quoting *Brown v. Illinois*, 422 U.S. 590, 610-11 (1975 (Powell, J., concurring in part)) (emphasis added). . . . “Entirely unreasonable” is not a phrase often used by the Supreme Court, and we find nothing in *Leon* or in the Court's subsequent opinions that would justify our dilution of the Court's particularly strong choice of words.

Id. at 670. This court must decide whether it was “entirely unreasonable” to believe probable cause existed to support the warrant so as to justify the “‘extreme sanction of exclusion’” that results from denying application of the good faith exception. See *id.* at 669 (quoting *Leon*, 468 U.S. at 916). “When assessing the objective good faith of police officers executing a warrant, we ‘must look to the totality of the circumstances. . . .’”

U.S. v. Weeks, 160 F.3d 1210, 1212 (8th Cir. 1998) (quoting *U.S. v. Simpkins*, 914 F.2d 1054, 1057 (8th Cir. 1990)); *U.S. v. Martin*, 833 F.2d 752, 756 (8th Cir. 1987)).


Under the totality of the circumstances, it was not “entirely unreasonable” for the officers to believe probable cause existed to support the warrant. *See Carpenter*, 341 F.3d at 670. The officers acted in good faith in executing the search warrant. Therefore, the court finds the search was reasonable and the evidence seized will not be suppressed.

IV. CONCLUSION

IT IS ORDERED:

1. Defendant’s Objections (docket no. 36) to Magistrate Judge Jarvey’s Report and Recommendation are **OVERRULED**.
2. The court **ADOPTS** the Report and Recommendation of Magistrate Judge Jarvey as to Defendant’s Motion to Suppress (docket no. 33).
3. Defendant’s Motion to Suppress (docket no. 19) is **DENIED**.
4. The time between the filing of Defendant’s Objections and the date of this Order is excluded from calculation pursuant to the Speedy Trial Act, 18 U.S.C. § 3161(h)(1)(F).

DATED this 3rd day of December, 2003.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA